



C.M.S.A(MD)No.31 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 24.10.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.S.A.(MD)No.31 of 2024

and

C.M.P.(MD)No.17625 of 2024

A.Subramanian : Appellant/Appellant/Petitioner

Vs.

1.Indhiragandhi

2.Soundararajan : Respondents 1 & 2/ Respondents 1 & 2/

Respondents 1 & 2/ Petitioners/plaintiffs

3.Poomalai : 3rd Respondent/3rd Respondent/

3rd Respondent/Defendant

PRAYER :- This Civil Miscellaneous Second Appeal is filed under Order 43 Rule 1 r/w section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 25/07/2024 passed in CMA No.4 of 2021 on the file of the Additional District Judge, Virudhunagar reversing the fair



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and decretal order, dated 23/01/2020 in EA No.50 of 2006 in EP No.35 of 2006 in O.S.No.117 of 2002 on the file of the Subordinate Judge, Aruppukottai and allow the Civil Miscellaneous Second Appeal.

For Appellant : Ms.Shwathini
for Mr.G.Prabhu Rajadurai
For Respondent : Mr.S.Parthasarathy – for R1 & R2

JUDGMENT

The present Civil Miscellaneous Second Appeal is filed against the execution proceedings in E.P.No.35 of 2006 in O.S.No.117 of 2002 in which the appellant filed E.A.No.50 of 2006 under Order 21 Rule 97 for obstruction of the execution proceedings.

2. As per the appellant is that the 3rd respondent one Poomalai, the vendor of the appellant and the vendor as the respondents 1 and 2, originally entered into an agreement of sale with Respondents 1 and 2 on 31.07.2000 for the sale of properties, which is the subject matter of the execution proceedings in E.P.No.35 of 2006.



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3. The respondents 1 and 2 filed a suit for specific performance in O.S.No.117 of 2002 against the 3rd respondent which was decreed in their favour. Subsequently, they filed execution petition to have the sale deed executed, which was also allowed. Accordingly, the sale deed was also executed in their favour. They had also filed E.P.No. 14 of 2003 for delivery of possession. While the execution petition was pending, the appellant filed E.A.No.50 of 2006 under Order 21 Rule 97 CPC claiming that he had purchased the property during the pendency of the suit and sought to obstruct execution, the same was dismissed, against which, he preferred an appeal in C.M.A.No.4 of 2021 which was also dismissed. Aggrieved by the same, the present Civil Miscellaneous Second Appeal had been filed and the same is pending. Simultaneously, he also filed a suit in O.S.No.83 of 2002 seeking for declaration of title, and to declare that the decree obtained by the respondents 1 and 2 in O.S.No.117 of 2002 as null and void, which is also pending.

4. According to the appellant, the execution proceeding in E.P.No.35 of 2006 for delivery of suit property ought to be stayed or otherwise the interest of appellant in the suit property as well as his case



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in O.S.No.83 of 2002 would be greatly prejudiced.

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4. Heard the learned counsel on either side and perused the materials available on record.

5. The suit filed by the appellant seeking a declaration of title is still pending. Until the decision of the said suit is rendered, if possession is delivered to the respondents 1 and 2, the rights and interest of the appellant will be prejudicially affected. Hence, in the interest of justice the Civil Miscellaneous Second Appeal is allowed only for the limited purpose as the question of ownership is still pending in O.S.No.83 of 2002 before the Subordinate Court, Aruppukottai.

6. The execution petition in E.P.No.35 of 2006 stands stayed until the disposal of O.S.No.83 of 2002 and the parties are at liberty to workout their remedy subject to the outcome of the judgment to be rendered in the suit in O.S.No.83 of 2002. Till such time, the trial Court is directed not to pass any order in E.P.No.35 of 2006.



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7. In the result, the Civil Miscellaneous Second Appeal is

allowed to the limited extent indicated above. No costs. Consequently,
connected Miscellaneous Petition is also closed.

24.10.2025

Index : Yes / No

NCC : Yes / No

RM

To

1.The Additional District Judge,
Virudhunagar.

2. The Subordinate Judge,
Aruppukottai.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

RM

Judgment in
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24.10.2025